

November 9, 2018

Via Federal Express

Public Service Commission of South Carolina
Attention: Clerk's Office
101 Executive Center Drive, Suite 100
Columbia, SC 29210

Re: Peony Solar LLC - Copy of Notice of Self-Certification of
Exempt Wholesale Generator Status
FERC Docket No. EG19-18-000

Dear Clerk:

Pursuant to 18 C.F.R. § 385.2010, enclosed please find a copy of the Notice of Self-Certification of Exempt Wholesale Generator Status filed by Peony Solar LLC with the Federal Energy Regulatory Commission in the above-referenced docket.

Thanks you very much for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Very truly yours,

/s/ Olya Petukhova

Olya Petukhova
Foley & Lardner LLP

Enclosure

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PSC SC
MAIL / DMS



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November 8, 2018

VIA ELECTRONIC FILING

Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

Re: **Peony Solar LLC, EG19-____-000**
Notice of Self-Certification of Exempt Wholesale
Generator Status

Dear Secretary Bose:

Pursuant to Section 366.7 of the Federal Energy Regulatory Commission's ("Commission") regulations,¹ enclosed for filing please find a notice of self-certification of exempt wholesale generator status of Peony Solar LLC. This filing has been mailed on this date to the South Carolina Public Service Commission.

Please contact me if you have any questions regarding this notice.

Very truly yours,

/s/ Thomas McCann Mullooly

Thomas McCann Mullooly
Olya Petukhova
Foley & Lardner LLP

cc: South Carolina Public Service Commission

¹ 18 C.F.R. § 366.7.

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Peony Solar LLC

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Docket No. EG19-____-000

**NOTICE OF SELF-CERTIFICATION OF PEONY SOLAR LLC
OF EXEMPT WHOLESALE GENERATOR STATUS**

Pursuant to the Public Utility Holding Company Act of 2005 (“PUHCA 2005”)² and Section 366.7³ of the Federal Energy Regulatory Commission’s (“Commission”) Rules and Regulations, Peony Solar LLC (“Applicant”), hereby submits this Notice of Self-Certification of Exempt Wholesale Generator (“EWG”) Status (“Notice”) based on its development, ownership and operation of an approximately 39 MW (AC) solar photovoltaic power facility located in Orangeburg County, South Carolina (the “Facility”). A copy of this notification has been provided to the South Carolina Public Service Commission (“SCPSC”). No rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced by the Facility, was in effect under the laws of the State of South Carolina, or any other state, on October 24, 1992. Therefore, no determinations are required to be made by any state commission prior to this self-certification of exempt wholesale generator status becoming effective. In support of this Notice, Applicant states as follows:

² Pub. L. No. 109-58, § 1266, 119 Stat. 594, 975 (2007).

³ 18 C.F.R. § 366.7 (2017).

I. COMMUNICATIONS

Applicant requests that all communications regarding this Notice should be directed to the following individuals:⁴

Patty Wright
Peony Solar LLC
111 Hawthorne Lane, Suite 201
Charlotte, NC 28205
Phone: (704) 376-2767
utility@pgrenewables.com

Thomas McCann Mullooly
Olya Petukhova
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
Phone: (414) 297.5566
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II. INFORMATION ABOUT APPLICANT

Applicant is a South Carolina limited liability company that has been formed to develop, own and operate an approximately 39 MW (AC) Qualifying Facility⁵ located in Orangeburg County, South Carolina, within the South Carolina Electric and Gas Company ("SCE&G") balancing authority area. The Facility is expected to begin generating test energy in the fourth quarter of 2018. Applicant has submitted an application for market-based rate authority under Section 205 of the Federal Power Act, which is currently pending before the Commission.⁶

The Facility's output is fully committed to SCE&G under a firm 21-year power purchase agreement. The Facility is comprised of solar photovoltaic panels and associated facilities and equipment necessary for the generation of power at wholesale. The Facility will include the electric interconnection facilities necessary to effectuate the wholesale sale of power from the Facility. The Facility will not include, nor will the Applicant operate or control transmission facilities other than these limited facilities needed to interconnect the Facility with the transmission system owned by SCE&G.

⁴ Applicant requests waiver of 18 C.F.R. § 385.203(b)(3) to the extent necessary to allow each person listed to be included on the official service list for this proceeding.

⁵ *Peony Solar LLC*, Certification of Qualifying Facility Status, Docket No. QF15-851-002 (July 24, 2017).

⁶ *Peony Solar LLC*, Docket No. ER19-2194-000 (application filed on Oct. 17, 2018).

III. REPRESENTATIONS REGARDING EWG STATUS

The Commission's regulations require that an EWG be engaged directly, or indirectly through one or more affiliates, and exclusively in the business of owning and/or operating one or more eligible facilities and selling electric energy at wholesale.⁷ Consistent with the Commission's regulations, Applicant makes the following representations to certify that it satisfies the requirements for EWG status:

- (1) Applicant is engaged directly and exclusively in the business of owning or leasing and/or operating all or part of one or more "eligible facilities" and selling electric energy at wholesale, and the Facility will satisfy the definition of an "eligible facility" because it will be used for the generation of electric energy exclusively for sale at wholesale and it includes only those interconnection transmission facilities that are necessary to effect the sale of electric energy at wholesale from the Facility, consistent with the Commission's precedent construing the definition of "eligible facility" under Section 32(a)(2) of PUHCA 1935.
- (2) No rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced thereby, was in effect under the laws of any State on October 24, 1992 and, therefore, no determinations by a state commission are required with respect to this self-certification.
- (3) Applicant does not sell electricity at retail to any customer. Accordingly, the Facility does not rely on the exception provided by Section 32(b) of PUHCA 1935 regarding foreign sales of power at retail.
- (4) No portion of the Facility will be owned, leased or operated by an "electric utility company" that is an "affiliate" or "associate company" of Applicant, as those terms are defined in Section 366.1 of the Commission's regulations, other than an "affiliate" or "associate company" that is an EWG.
- (5) Applicant may engage in activities that the Commission has previously determined to be "incidental" to an EWG's primary business of owning and operating eligible facilities and selling electric energy at wholesale, including:
 - (a) wholesale marketing and brokering of electric energy that Applicant has not generated;⁸

⁷ See 18 C.F.R. §§ 366.7 and 366.1 (2014). Section 366.1 incorporates Sections 32(a)(2) through (4), and Section 32(b) through (d) of the Public Utility Holding Company Act of 1935, 15 U.S.C. §§ 79z-5a(a)(2)-(4), 79z-5b(b)-(d) ("PUHCA 1935"), for purposes of establishing or determining whether an entity qualifies for EWG status.

⁸ See, e.g., *Entergy Power Marketing Corp.*, 73 FERC ¶ 61,063 (1995); *LG&E Power Marketing, Inc.*, 67 FERC ¶ 61,083 (1994).

- (b) selling or reselling ancillary services and interconnected operations services at wholesale, such as operating reserves (spinning and supplemental reserves), reactive supply and voltage control, regulation and frequency response, energy imbalance, real power loss service, back-up supply service, and restoration service, consistent with Commission precedent construing the exclusivity requirements of Section 32 of PUHCA;⁹
 - (c) reassigning excess transmission capacity¹⁰ originally obtained to effect a wholesale sale of electric energy;
 - (d) entering into contracts for transmission capacity solely to the extent necessary to effect sales at wholesale of electricity generated by Applicant or others;¹¹
 - (e) engaging in development activities, such as developing and constructing additional generating facilities;¹²
 - (f) selling “green” power certificates or credits consistent with the Commission’s limitation that an EWG may sell such certificates or credits where they are associated with power produced by the Facility;¹³ and
 - (g) leasing or renting property to third parties, but to the extent a lease arrangement is not reasonably necessary to Applicant’s wholesale power business and a rental fee is received above a nominal amount, Applicant will, consistent with EWG precedent, donate or transfer such rental revenues to a non-affiliated entity.¹⁴
- (6) Applicant will notify the Commission of any material changes in facts that may affect its eligibility for EWG status in accordance with the procedures set forth in 18 C.F.R. § 366.7(c).

⁹ See, e.g., *Duke Energy Oakland, LLC*, 83 FERC ¶ 61,304 (1998); *Sithe Framingham, LLC*, 83 FERC ¶ 61,106 (1998).

¹⁰ See *CNG Power Services Corp.*, 71 FERC ¶ 61,026, at 61,103-104 (1995).

¹¹ See *CNG Power Services Corp.*, 71 FERC ¶ 61,378 (1995).

¹² See, e.g., *Empresa Valley Hermoso, S.A.*, 72 FERC ¶ 61,306, at 62,288 (1995).

¹³ See *Madison Windpower, LLC*, 93 FERC ¶ 61,270 (2000).

¹⁴ See, e.g., *Duke Energy Hot Spring, LLC*, 98 FERC ¶ 61,287 (2002); *PSEG Fossil, LLC, et al.*, 95 FERC ¶ 61,405 (2001).

IV. CONCLUSION

For the foregoing reasons, Applicant satisfies the requirements for EWG status.

Respectfully submitted,

/s/ Thomas McCann Mullooly

Thomas McCann Mullooly

Olya Petukhova

Foley & Lardner LLP

777 East Wisconsin Avenue

Milwaukee, WI 53202

414-297-5566

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Dated: November 8, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon the South Carolina Public Service Commission in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated at Milwaukee, WI this 8th day of November, 2018.

/s/ Olya Petukhova
Olya Petukhova
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
(414) 297-5566

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